



[Billing Code: 6750-01S]

## **FEDERAL TRADE COMMISSION**

### **16 CFR Part 305**

**[3084-AB15]**

#### **Energy Labeling Rule**

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) proposes amending the Energy Labeling Rule (“Rule”) to require EnergyGuide labels for portable air conditioners and seeks comment on these proposed requirements, particularly the proposed effective date. The Commission also proposes conforming amendments to reflect upcoming Department of Energy (“DOE”) changes to efficiency descriptors for central air conditioners. In addition, the Commission seeks comment on the labeling requirements in our regulations.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

**INFORMATION** section below. Write “Portable Air Conditioners, Matter No.

R611004” on your comment, and file your comment online through

<https://www.regulations.gov> by following the instructions on the web-based form. If

you prefer to file your comment on paper, write “Portable Air Conditioners, Matter

No. R611004” on your comment and on the envelope and mail your comment to the

following address: Federal Trade Commission, Office of the Secretary, 600

Pennsylvania Avenue NW, Suite CC–5610 (Annex C), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex C), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome (202-326-2889), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room CC-9528, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Energy Labeling Rule**

The Commission issued the Energy Labeling Rule (“Rule”) in 1979,<sup>1</sup> pursuant to the Energy Policy and Conservation Act of 1975 (“EPCA”).<sup>2</sup> The Rule requires energy labeling for major home appliances and other consumer products to help consumers compare the energy usage and costs of competing models. It also contains labeling requirements for refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, furnaces, central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.

The Rule requires manufacturers to attach yellow EnergyGuide labels to many of the covered products and prohibits retailers from removing these labels or rendering them illegible. In addition, it directs sellers, including retailers, to post label information on websites and in paper catalogs from which consumers can order

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<sup>1</sup> 44 FR 66466 (Nov. 19, 1979).

<sup>2</sup> 42 U.S.C. 6294. EPCA also requires the Department of Energy (“DOE”) to develop test procedures that measure how much energy appliances use, and to determine the

products. EnergyGuide labels for most covered products contain three key disclosures: estimated annual energy cost, a product's energy consumption or energy efficiency rating as determined by DOE test procedures, and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. The Rule requires marketers to use national average costs for applicable energy sources (*e.g.*, electricity, natural gas, oil) as calculated by DOE in all cost calculations. Under the Rule, the Commission periodically updates comparability range and annual energy cost information based on manufacturer data submitted pursuant to the Rule's reporting requirements.<sup>3</sup>

## **II. Proposed EnergyGuide Labels for Portable Air Conditioners**

The Commission proposes adding labeling requirements for portable air conditioners. Under EPCA, the Commission may require labeling for DOE-designated covered products if it determines that labeling will "assist purchasers in making purchasing decisions" and will be "economically and technologically feasible." 42 U.S.C. 6294(a)(3). As detailed below, the Commission has already sought comment on labeling requirements for portable air conditioners in several earlier *Federal Register* notices. In these notices, the Commission discussed the benefits and burdens of such labels and their format and content, which would resemble the EnergyGuide labels already required for room air conditioners.<sup>4</sup> It found, in accordance with its EPCA authority, that labeling for this product category

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representative average cost a consumer pays for different types of energy.

<sup>3</sup> 16 CFR 305.10.

<sup>4</sup> 79 FR 34642 (June 18, 2014); 80 FR 67351 (Nov. 2, 2015); 81 FR 62681 (Sept. 12, 2016); and 82 FR 29230 (June 28, 2017). During this proceeding, the Commission waited on label requirements pending a final DOE-issued test procedure for these products. DOE published that test procedure on June 1, 2016 (81 FR 35242) and it became mandatory for energy use representations on November 28, 2016.

is likely to be economically and technologically feasible and is likely to assist consumers in their purchasing decisions.<sup>5</sup> In response to these earlier notices and over several rounds of comments, a wide array of stakeholders, including industry members, utilities, and consumer groups supported (or did not oppose) the proposal.

In January 2017, however, DOE withdrew its final efficiency standards from publication in the *Federal Register* pursuant to the Presidential Memorandum on Implementation of Regulatory Freeze, leaving the final standards compliance date unclear. As a result, the Commission delayed finalizing the label requirements due to uncertainty about the timing of DOE efficiency standards for these products.<sup>6</sup>

However, a recent DOE notice announcing a compliance date for the standards has resolved that uncertainty.<sup>7</sup> Accordingly, the Commission now proposes to require an EnergyGuide label for portable air conditioners beginning on January 10, 2025 to coincide with those DOE standards. Manufacturers would be able to use the label earlier. The Commission seeks comment on the proposed amendments, particularly the proposed effective date for those labels.

#### **A. Portable Air Conditioner Energy Costs and Consumer Labels**

Earlier in this proceeding, the Commission addressed the benefits as well as the economic and technological feasibility of labeling for portable air conditioners. In a 2015 notice, for example, it explained that portable air conditioners are common in the marketplace, vary in energy efficiency, and use energy similar to, or greater than,

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<sup>5</sup> 80 FR at 67357; and 81 FR at 62683. In discussing similar economic and technological feasibility determinations for labels in 1979, the Commission concluded “that Congress[’s] intent was to permit the exclusion of any product category, if the Commission found that the costs of the labeling program would substantially outweigh any potential benefits to consumers.” 44 FR at 66467-68 (discussing determinations under 42 U.S.C. 6294(a)(1)).

<sup>6</sup> 82 FR at 29232.

already-labeled room air conditioners.<sup>8</sup> In addition, DOE reported the aggregate energy use of portable air conditioners has increased as these units have become more popular.<sup>9</sup> According to DOE estimates, sellers shipped 1.32 million units in the United States in 2014, with future growth projected.<sup>10</sup> DOE also found these products exhibit a wide range of efficiency ratings and energy costs for similarly sized units (a difference of about \$100 per year between the most and least efficient models). After the 2025 implementation of DOE standards that range is likely to become smaller, but remain significant (a difference of about \$30-\$50 depending on the size category as indicated in proposed Appendix E2).

In addition, DOE estimated average per-household annual electricity consumption for these products at approximately 804 kWh/yr for residential products, generating \$105 in annual energy costs (at \$0.13 per kWh/hr).<sup>11</sup> Therefore, energy labels are likely to assist consumers with their purchasing decisions by allowing them to compare the energy costs of competing models and, consequently, save significant money on their electric bills.

In addition, there is no evidence that labeling is economically or technologically infeasible (*i.e.*, that the costs of labeling substantially outweigh consumer benefits). Indeed, the burdens (discussed *infra* in the Paperwork Reduction

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<sup>7</sup> 85 FR 1378 (Jan. 10, 2020).

<sup>8</sup> 80 FR at 67357-58.

<sup>9</sup> See 78 FR 40403, 40404-05 (July 5, 2013).

<sup>10</sup> 85 FR 1378; and “2016-12 Final Rule Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Portable Air Conditioners” (“DOE TSD”) December 2016 at <https://www.regulations.gov/document?D=EERE-2013-BT-STD-0033-0047>.

<sup>11</sup> DOE TSD at Table 7.3.2.

Act section) of labeling are not likely to differ significantly from those for room air conditioners, which already have EnergyGuide labels.<sup>12</sup>

## **B. Proposed Label Requirements**

The proposed portable air conditioner label would be largely identical to the current room air conditioner label in content and format. As with the room air conditioner labels, the labels would appear on packaging, not the product itself. The proposed amendments also incorporate DOE's definition of "portable air conditioner" at section 305.3.<sup>13</sup> The appendices to the proposed Rule contain ranges specifically for portable air conditioners broken down into three size categories. The FTC staff derived these cost ranges based on DOE energy use data and has applied the same electricity cost rate (\$0.13 kWh/hr) currently used for room air conditioner labels.<sup>14</sup> As discussed in detail in the 2016 and 2017 notices, the Commission does not propose combining the ranges for portable and room air conditioners because it is not clear whether consumers routinely compare the two product categories when shopping.<sup>15</sup> However, consumers who want to compare the two product categories would be able to easily do so using the label's energy cost disclosure. In addition, consistent with requirements applicable to room air conditioners, the proposed amendments contain reporting requirements identical to those created by DOE for these products.

Finally, the Commission proposes to establish an effective date for the label

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<sup>12</sup> See 80 FR at 67357 and 81 FR at 62683.

<sup>13</sup> To effect new labeling requirements, the proposed amendments insert the term "portable air conditioner" next to "room air conditioner" into appropriate paragraphs of the Rule as detailed in the amendatory language included in this notice.

<sup>14</sup> See DOE TSD, Chapter 3 at 24-25 and Ch. 5 at 5-20. Using estimates for the most energy consumptive models based on the DOE standards, the ranges by size category expressed in yearly energy consumption are: 1) less than 6,000 Btu/hr: (375-753 kWh/yr), 2) 6,000 to 7,999 Btu/hr: (663-916 kWh/yr), and 3) 8,000 Btu/yr or greater: (807-1034 kWh-yr).

that coincides with the compliance date for DOE standards. Citing burdens associated with testing and labeling, industry comments earlier in this proceeding urged the Commission to synchronize any new labeling requirements with the DOE standards compliance date.<sup>16</sup> The Commission seeks comments on the proposed effective date.

### **III. Conforming Changes to Efficiency Descriptors for Central Air**

#### **Conditioners**

The Commission also seeks comments on updates to the Rule’s efficiency descriptors for central air conditioners in Section 305.20 to conform to pending DOE changes. In 2017, as part of efficiency standards proceeding, DOE announced changes to the rating methods and associated efficiency descriptors for central air conditioners (*e.g.*, from “Seasonal Energy Efficiency Ratio (SEER)” to “Seasonal Energy Efficiency Ratio 2 (SEER2)”).<sup>17</sup> The DOE changes become effective on January 1, 2023. To ensure consistency with the DOE standards, the Commission proposes to change all applicable references in Part 305, effective on January 1, 2023. Given the relatively small differences in the ratings produced by the old and the new rating methods, the Commission does not propose any additional changes to the label. The Commission also plans to update ranges in Appendix H and I as well as applicable numbers on the sample labels in Appendix L when updated data become available. The Commission seeks comments on all aspects of this proposal, including whether data is available to update the tables in Appendices H and I.

### **IV. Questions on Label Layout and Format Requirements**

The Commission also requests comment on whether we should revise Section

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<sup>15</sup> 81 FR at 62682; and 82 FR at 29231-29232.

<sup>16</sup> 82 FR 29231.

<sup>17</sup> 82 FR 1786 (Jan. 6, 2017); and 82 FR 24211 (May 26, 2017).

305.13 – Layout, format, and placement for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioner, and pool heaters – and Section 305.20 – Labeling for central air conditioners, heat pumps, and furnaces – of the Rule. These sections address required disclosures and include detailed requirements for labeling of the covered products. For example, Section 305.13(b) *Layout* specifies the trim size dimensions for labels, including the precise width and length (e.g. width 5 ¼ to 5 ½ inches (13.34 cm. to 13.97 cm.) and the number of picas for the copy set (between 27 and 29); and the type style and setting. Section 305.13(c) *Type style and setting* states that Arial series typeface or equivalent must be used exclusively, prohibits the use of hyphens and mandates that text “be set flush left with two points leading except where otherwise indicated.” Section 305.13 (e)(1) *Adhesive labels* states that:

All adhesive labels should be applied so they can be easily removed without the use of tools or liquids, other than water, but should be applied with an adhesive with an adhesive capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the retailer or consumer.

The provision then provides that the paper stock for the labels shall have a basic weight of not less than 58 pounds per 500 sheets (25” x 38”) or equivalent and includes a suggested minimum peel adhesive capacity: “[a] minimum peel adhesion capacity for the adhesive of 12 ounces per square inch is suggested, but not required if the adhesive can otherwise meet the above standard.”

Section 305.20 of the Rule similarly contains requirements for layout; type



style and setting; and label type with almost identical provisions addressing trim size, number of picas, requirement of Arial font, paper weight specifications, and includes a suggested minimum peel adhesion capacity.

Freeing businesses from unnecessarily prescriptive requirements can benefit businesses and consumers. Other Commission Rules and Guides containing labeling requirements do not include the same level of detail regarding the content of the label.

For example, the Rules and Regulations Under the Textile Fiber Products Identification Act, 16 CFR part 303, require that:

§ 303.15 Required label and method of affixing.

- (a) A label is required to be affixed to each textile product and, where required, to its package or container in a secure manner. Such label shall be conspicuous and shall be of such durability as to remain attached to the product and its package throughout any distribution, sale, resale and until sold and delivered to the ultimate consumer.

Similarly, the Commission's Guides for Select Leather and Imitation Leather Products, 16 CFR part 24, also address the form of disclosures:

§ 24.2 (g) Form of disclosures under this section. All disclosures described in this section should appear in the form of a stamping on the product, or on a tag, label, or card attached to the product, and should be affixed so as to remain on or attached to the product until received by the consumer purchaser.

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The Commission seeks comment on whether a more flexible provision would provide sufficient guidance to industry on expected labeling requirements and adequately

protect consumers. Specifically, the Commission seeks comment on the following questions:

*Section 305.13 Layout, format, and placement of labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters.*

- a. Should the Commission revise this section of the Rule to require only that the layout, type style, and setting be clear and conspicuous, and that the labels be sufficiently durable and applied with an adhesive whose capacity is sufficient to prevent dislodgment of the labels during normal handling throughout the chain of distribution to the retailer or consumer? Why or why not?
- b. With respect to the provisions regarding the adhesive for the labels, is the inclusion of the safe harbor regarding the suggested peel capacity in the current provision interpreted by industry as a required standard?
- c. What are the costs and benefits of the current provision for consumers and businesses?
- d. Would a more flexible provision provide sufficient guidance to industry on the expected labeling requirements?
- e. How would a more flexible provision affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?
- f. If this Section of the Rule were modified to include a more flexible provision, should use of the specific labeling requirements in the prior version be a form of safe harbor for industry? Why or why not?

*Section 305.20 Labeling for central air conditioning, heat pumps, and furnaces.*

- a. Should the Commission revise this section of the Rule to require only that the layout, type style and setting be clear and conspicuous, and that the labels be sufficiently durable and applied with an adhesive whose capacity is sufficient to prevent dislodgment of the labels during normal handling throughout the chain of distribution to the retailer or consumer? Why or why not?
- b. With respect to the provisions regarding the adhesive for the labels, is the inclusion of the safe harbor regarding the suggested peel capacity in the current provision interpreted by industry as a required standard?
- c. What are the costs and benefits of the current provision for consumers and businesses?
- d. Would a more flexible provision provide sufficient guidance to industry on the expected labeling requirements?
- e. How would a more flexible provision affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?
- f. If this Section of the Rule were modified to include a more flexible provision, should use of the specific labeling requirements in the prior version be a form of safe harbor for industry? Why or why not?

## **V. Request for Comment**

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN *FEDERAL REGISTER*]. Write “Portable Air Conditioners, Matter No. R611004” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it through <https://www.regulations.gov>, by following the instruction on the web-based form provided.

If you file your comment on paper, write “Portable Air Conditioners, Matter No. R611004” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex C), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex C), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website, <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section

6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov* – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this NPRM and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Because written comments appear adequate to present the views of all interested parties, the Commission has not scheduled an oral hearing regarding these proposed amendments. Interested parties may request an opportunity to present views orally. If such a request is made, the Commission will publish a document in the *Federal Register* stating the time and place for such oral presentation(s) and describing the procedures that will be followed. Interested parties who wish to present oral views must submit a hearing request, on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], in the form of a written comment that describes the issues on which the party wishes to speak. If there is no oral hearing, the Commission will base its decision on the written rulemaking record.

## **VI. Paperwork Reduction Act**

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by the Paperwork Reduction Act (“PRA”).<sup>18</sup> OMB has approved the Rule’s existing information collection requirements through December 31, 2022 (OMB Control No. 3084-0069). The amendments include new labeling requirements for portable air conditioners that constitute information collections under the PRA. Accordingly, the Commission is seeking OMB clearance specific to the Rule amendments.<sup>19</sup>

Burden estimates below are based on Census data, DOE figures and estimates, public comments, general knowledge of manufacturing practices, and trade

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<sup>18</sup> 44 U.S.C. 3501 *et seq*; *see also* 5 CFR 1320.3(c).

<sup>19</sup> The PRA analysis for this rulemaking focuses strictly on the information collection requirements created by and/or otherwise affected by the amendments. Unaffected information collection provisions have previously been accounted for in past FTC analyses under the Rule and are covered by the current PRA clearance from OMB.

association advice and figures. The FTC estimates that there are about 150 basic models of portable air conditioners (*i.e.*, units with essentially identical physical and electrical characteristics). In addition, FTC staff estimates that there are 45 portable air conditioner manufacturers and 1,500,000 portable air conditioner units shipped each year in the U.S. The FTC seeks comment on the following estimates:

*Reporting:* The Rule requires that manufacturers of covered products annually submit a report for each model in current production containing the same information that must be submitted to the Department of Energy pursuant to 10 CFR part 429. In lieu of submitting the required information to the Commission, manufacturers may submit such information to DOE directly via the agency's Compliance Certification Management System, available at <https://regulations.doe.gov/ccms>, as provided by 10 CFR 429.12. Because manufacturers are already required to submit these reports to DOE, FTC staff estimates that any additional burden associated with providing the information to the FTC is minimal. FTC staff estimates that the average reporting burden for manufacturers of portable air conditioners will be approximately 15 hours per manufacturer. Based on this estimate, the annual reporting burden for manufacturers of portable air conditioners is 675 hours (15 hours  $\times$  45 manufacturers).<sup>20</sup> Staff estimates that information processing staff, at an hourly rate

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<sup>20</sup> In earlier comments, AHAM (#681-00012) estimated that the data entry involved in filing reports with the FTC is not particularly burdensome, but estimated that other tasks involved in reporting (such as performing the required testing and gathering information) could take as long as 40 hours per manufacturer. As noted above, however, testing and reporting are required and accounted for in DOE regulations. As a result, staff estimates that the primary burdens associated with reporting are due to DOE requirements.

of \$16.24,<sup>21</sup> will typically perform the required tasks, for an estimated annual labor cost of \$10,962.

*Labeling:* The proposed amendments require that manufacturers label portable air conditioners. The burden imposed by this requirement consists of the time needed to draft labels and incorporate them onto package designs. Since EPCA and the Rule specify the content and format for the required labels and FTC staff provide online label templates, manufacturers need only input the energy consumption figures and other product-specific information derived from testing. FTC staff estimates that the time to incorporate the required information into labels and label covered products is five hours per basic model. Accordingly, staff estimates that the approximate annual burden involved in labeling covered products is 750 hours [150 basic models × 5 hours]. Staff estimates that information processing staff, at an hourly rate of \$16.24,<sup>22</sup> will typically perform the required tasks, for an estimated annual labor cost of \$12,180.

*Testing:* Manufacturers of portable air conditioners must test each basic model they produce to determine energy usage, but the majority of tests conducted are required by DOE rules. As a result, it is likely that only a small portion of the tests conducted are attributable to the Rule's requirements. In addition, manufacturers need not subject each basic model to testing annually; they must retest only if the product design changes in such a way as to affect energy consumption. FTC staff estimates that manufacturers will require approximately 36 hours for testing of portable air

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<sup>21</sup> These labor cost estimates are derived from the Bureau of Labor Statistics figures in "Table 1." National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2018," *available at*: <https://www.bls.gov/news.release/ocwage.t01.htm>.

<sup>22</sup> *Id.*



conditioners,<sup>23</sup> and that 25% of all basic models are tested annually due to the Rule's requirements. Accordingly, the estimated annual testing burden for portable air conditioners is 1,368 hours ((150 basic models × 25%) × 36 hours). Staff estimates that engineering technicians, at an hourly rate of \$28.37,<sup>24</sup> will typically perform the required tasks, for an estimated annual labor cost of \$38,300.

*Recordkeeping:* The Rule also requires manufacturers of covered products to retain records of test data generated in performing the tests to derive information included on labels. *See* 16 CFR 305.21. The FTC estimates that the annual recordkeeping burden for manufacturers of portable air conditioners will be approximately one minute per basic model to store relevant data. Accordingly, the estimated annual recordkeeping burden would be approximately 3 hours (150 basic models × one minute). Staff estimates that information processing staff, at an hourly rate of \$16.24,<sup>25</sup> will typically perform the required tasks, for an estimated annual labor cost of \$50.

*Online and Retail Catalog Disclosures:* Staff estimates that there are approximately 400 sellers of products covered under the Rule who are subject to the Rule's catalog disclosure requirements. Staff has previously estimated that covered online and catalog sellers spend approximately 17 hours per year to incorporate relevant product data for products that are currently covered by the Rule. Staff estimates that the portable air conditioner requirements will add one additional hour per year in incremental burden per seller. Staff estimates that these additions will result in an incremental burden of 400 hours (400 sellers × one hour annually). Staff

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<sup>23</sup> AHAM estimated manufacturers would require 32 hours per model for testing and up to 4 hours for preparing the test data. AHAM Comment, #681-0016.

<sup>24</sup> *See supra* note 20.

estimates that information processing staff, at an hourly rate of \$16.24,<sup>26</sup> will typically perform the required tasks, for an estimated incremental annual labor cost of \$6,496.

*Estimated annual non-labor cost burden:* Staff anticipates that manufacturers are not likely to require any significant capital costs to comply with the proposed amendments.

## **VII. Regulatory Flexibility Act**

The Regulatory Flexibility Act (“RFA”)<sup>27</sup> requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendment on small entities. The RFA requires that the Commission provide an Initial Regulatory Flexibility Analysis (“IRFA”) with a proposed rule and a Final Regulatory Flexibility Analysis (“FRFA”) with a final rule, if any, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.<sup>28</sup> The Commission does not anticipate that the proposed rule will have a significant economic impact on a substantial number of small entities, but it recognizes that some of the affected manufacturers may qualify as small businesses under the relevant thresholds. Therefore, based on available information, the Commission certifies that amending the Rules as proposed will not have a significant economic impact on a substantial number of small businesses.

The Commission estimates that the amendments will apply to 300 online and paper catalog sellers of covered products and about 45 portable air conditioner manufacturers. The Commission expects that approximately 150 of these various

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> 5 U.S.C. 601–612.

<sup>28</sup> 5 U.S.C. 605. The proposed conforming changes to central air conditioner descriptors will have no impact on the Rule’s current burden.

entities qualify as small businesses.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed rule, the number of these companies that are small entities, and the average annual burden for each entity. Although the Commission certifies under the RFA that the rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

*A. Description of the Reasons That Action by the Agency Is Being Taken*

The Commission is proposing expanded product coverage and additional improvements to the Rule to help consumers in their purchasing decisions for portable air conditioners.

*B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule*

The objective of the rule is to improve the effectiveness of the current labeling program. The legal basis for the Rule is the Energy Policy and Conservation Act (42 U.S.C. 6292 et seq.).

*C. Small Entities To Which the Proposed Rule Will Apply*

Under the Small Business Size Standards issued by the Small Business Administration, appliance manufacturers qualify as small businesses if they have

fewer than 500 employees. Catalog sellers qualify as small businesses if their sales are less than \$8.0 million annually. The Commission estimates that there are approximately 150 entities subject to the proposed rule's requirements that qualify as small businesses.<sup>29</sup> The Commission seeks comment and information with regard to the estimated number and nature of small business entities for which the proposed rule would have a significant economic impact.

#### *D. Projected Reporting, Recordkeeping and Other Compliance Requirements*

The changes under consideration would slightly increase reporting or recordkeeping requirements associated with the Commission's labeling rules as discussed above. The amendments likely will increase compliance burdens by extending the labeling requirements to portable air conditioners. The Commission assumes that the label design change will be implemented by graphic designers.

#### *E. Duplicative, Overlapping, or Conflicting Federal Rules*

The Commission has not identified any other federal statutes, rules, or policies that duplicate, overlap, or conflict with the proposed rule. The Commission invites comment and information on this issue.

#### *F. Significant Alternatives to the Proposed Rule*

The Commission seeks comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on small entities. For example, the Commission is currently unaware of the need to adopt any special provisions for small entities. However, if such issues are identified, the Commission could consider alternative approaches such as extending the effective date of these amendments for

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<sup>29</sup> 81 FR 62681 (Sept. 12, 2016).

catalog sellers to allow them additional time to comply beyond the labeling deadline set for manufacturers. If the comments filed in response to this notice identify small entities that are affected by the proposed rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

#### **VIII. Communications by Outside Parties to the Commissioners or Their Advisors**

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

#### **IX. Proposed Rule Language**

##### **List of Subjects in 16 CFR Part 305**

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons stated above, the Commission proposes to amend part 305 of title 16 of the Code of Federal Regulations as follows:

##### **PART 305--ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT ("ENERGY LABELING RULE")**

1. The authority citation for Part 305 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 6294.

##### **PART 305 - [AMENDED]**

2. In part 305, revise all references to “seasonal energy efficiency ratio (SEER)” to read “seasonal energy efficiency ratio 2”; revise all references to “SEER” to read “SEER2”; revise all references to “heating seasonal performance factor” to read “heating seasonal performance factor 2”; revise all references to “HSPF” to read “HSPF2”; revise all references to “Energy Efficiency Ratio” to read “Energy Efficiency Ratio 2”; and revise all references to “EER” to read “EER2.”

3. In § 305.2,
- a. Redesignate paragraph (l)(23) as (24);
  - b. Add new paragraph (23), and
  - c. Revise paragraph (p).

The revisions read as follows:

**§ 305.2 Definitions.**

\* \* \* \* \*

(l) \* \* \*

(23) Portable air conditioners.

\* \* \* \* \*

(p) *Energy efficiency rating* means the following product-specific energy usage descriptors: annual fuel utilization efficiency (AFUE) for furnaces; combined energy efficiency ratio (CEER) for room and portable air conditioners; seasonal energy efficiency ratio (SEER) for the cooling function of central air conditioners and heat pumps; heating seasonal performance factor (HSPF) for the heating function of heat pumps; airflow efficiency for ceiling fans; and, thermal efficiency (TE) for pool heaters, as these descriptors are determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293). These product-specific energy usage

descriptors shall be used in satisfying all the requirements of this part.

\* \* \* \* \*

4. In § 305.3, add paragraph (j) to read as follows:

**§ 305.3 Description of appliances and consumer electronics.**

\* \* \* \* \*

(j) *Portable air conditioner* means a portable encased assembly, other than a packaged terminal air conditioner, room air conditioner, or dehumidifier, that delivers cooled, conditioned air to an enclosed space, and is powered by single-phase electric current. It includes a source of refrigeration and may include additional means for air circulation and heating.

5. In § 305.7, add paragraph (e)(3) to read as follows:

**§ 305.7 Prohibited Acts.**

\* \* \* \* \*

(e) \* \* \*

(3) The requirements of this part shall not apply to any portable air conditioner produced before January 10, 2025.

\* \* \* \* \*

6. Amend § 305.10 by revising paragraph (f) to read as follows:

**§ 305.10 Determinations of capacity.**

\* \* \* \* \*

(f) *Room air conditioners and portable air conditioners.* The capacity shall be the cooling capacity in Btu per hour, as determined according to appendix F to 10 CFR

part 430, subpart B, but rounded to the nearest value ending in hundreds that will satisfy the relationship that the energy efficiency value used in representations equals the rounded value of capacity divided by the value of input power in watts. If a value ending in hundreds will not satisfy this relationship, the capacity may be rounded to the nearest value ending in 50 that will.

\* \* \* \* \*

7. In § 305.11, revise paragraph (b)(1) to read as follows:

**§ 305.11 Submission of data.**

\* \* \* \* \*

(b)(1) All data required by § 305.11(a) except serial numbers shall be submitted to the Commission annually, on or before the following dates:

<b>Product category</b>	<b>Deadline for data submission</b>
Refrigerators	Aug. 1
Refrigerators-freezers	Aug. 1
Freezers	Aug. 1
Central air conditioners	July 1
Heat pumps	July 1
Dishwashers	June 1
Water heaters	May 1
Room air conditioners	July 1
Portable air conditioners	Feb. 1
Furnaces	May 1
Pool heaters	May 1
Clothes washers	Oct. 1
Fluorescent lamp ballasts	Mar. 1
Showerheads	Mar. 1
Faucets	Mar. 1
Water closets	Mar. 1



Ceiling fans	Mar. 1
Urinals	Mar. 1
Metal halide lamp fixtures	Sept. 1
General service fluorescent lamps	Mar. 1
Medium base compact fluorescent lamps	Mar. 1
General service incandescent lamps	Mar. 1
Televisions	June 1

\* \* \* \* \*

8. Amend § 305.13 by revising the section heading and adding paragraph (e)(3) to read as follows:

**§ 305.13 Layout, format, and placement of labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, portable air conditioners, and pool heaters.**

\* \* \* \* \*

(e) \* \* \*

\* \* \* \* \*

(3) *Package labels for certain products.* Labels for electric instantaneous water heaters shall be printed on or affixed to the product's packaging in a conspicuous location. Labels for room air conditioners produced on or after October 1, 2019 and portable air conditioners produced on or after January 10, 2025, shall be printed on or affixed to the principal display panel of the product's packaging. The labels for electric instantaneous water heaters, room air conditioners, and portable air conditioners shall be black type and graphics on a process yellow or other neutral contrasting background.

\* \* \* \* \*

9. In § 305.18 revise the section heading to read as follows:

**§305.18 Label content for room air conditioners and portable air conditioners.**

\* \* \* \* \*

10. Amend § 305.20 by revising paragraphs (g)(11) through (14) to read as follows:

**§ 305.20 Labeling for central air conditioners, heat pumps, and furnaces.**

\* \* \* \* \*

(g) \* \* \*

(11) For any single-package air conditioner with a minimum Energy Efficiency Ratio 2 (EER2) of at least 10.6, any split system central air conditioner with a rated cooling capacity of at least 45,000 Btu/h and minimum efficiency ratings of at least 13.8 SEER2 and 11.2 EER2 or at least 15.2 SEER2 and 9.8 EER2, and any split-system central air conditioners with a rated cooling capacity less than 45,000 Btu/h and minimum efficiency ratings of at least 14.3 SEER2 and 11.7 EER2 or at least 15.2 SEER2 and 9.8 EER2, the label must contain the following regional standards information:

(i) A statement that reads:

Notice

Federal law allows this unit to be installed in all U.S. states and territories.

(ii) For split systems, a statement that reads:

Energy Efficiency Ratio 2 (EER2): The installed system's minimum EER2 is \_\_\_\_.

(iii) For single-package air conditioners, a statement that reads:

Energy Efficiency Ratio 2 (EER2): This model's EER2 is [\_\_\_\_].

(12) For any split system central air conditioner with a rated cooling capacity of at

least 45,000 Btu/h and minimum efficiency ratings of at least 13.8 SEER2 but lower than 11.2 EER2 or at least 15.2 SEER2 but lower than 9.8 EER2, and any split-system central air conditioners with a rated cooling capacity less than 45,000 Btu/h and minimum efficiency ratings of at least 14.3 SEER2 but lower than 11.7 EER2 or at least 15.2 SEER2 but lower than 9.8 EER2, the label must contain the following regional standards information.

(i) A statement that reads:

Notice

Federal law allows this unit to be installed only in: AK, AL, AR, CO, CT, DC, DE, FL, GA, HI, ID, IL, IA, IN, KS, KY, LA, MA, ME, MD, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VT, WA, WV, WI, WY and U.S. territories. Federal law prohibits installation of this unit in other states.

(ii) A map appropriate for the model and accompanying text as illustrated in the sample label 7 in appendix L of this part.

(iii) A statement that reads:

Energy Efficiency Ratio 2 (EER2): The installed system's minimum EER2 is \_\_\_\_.

(13) For any split system central air conditioner with a rated cooling capacity of at least 45,000 Btu/h and a minimum rated efficiency rating less than 13.8 SEER2, and any split-system central air conditioners with a rated cooling capacity less than 45,000 Btu/h and minimum efficiency ratings of less than 14.3 SEER2, the label must contain the following regional standards information:

(i) A statement that reads:

Notice

Federal law allows this unit to be installed only in: AK, CO, CT, ID, IL, IA, IN, KS, MA, ME, MI, MN, MO, MT, ND, NE., NH, NJ, NY, OH, OR, PA, RI, SD, UT, VT, WA, WV, WI, and WY. Federal law prohibits installation of this unit in other states.

(ii) A map appropriate for the model and accompanying text as illustrated in the sample label 7 in appendix L of this part.

(iii) A statement that reads:

Energy Efficiency Ratio 2 (EER2): The installed system's minimum EER2 is \_\_\_\_.

(14) For any single-package air conditioner with a minimum EER2 below 10.6, the label must contain the following regional standards information:

(i) A statement that reads:

Notice

Federal law allows this unit to be installed only in: AK, AL, AR, CO, CT, DC, DE, FL, GA, HI, ID, IL, IA, IN, KS, KY, LA, MA, ME, MD, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VT, WA, WV, WI, WY and U.S. territories. Federal law prohibits installation of this unit in other states.

(ii) A map appropriate for the model and accompanying text as illustrated in the sample label 7 in appendix L of this part.

\* \* \* \* \*

11. In § 305.27 revise paragraph (a)(1)(i) to read as follows:

**§305.27 Paper catalogs and Web sites.**

(a) \* \* \*

(1) Content.

(i) Products required to bear EnergyGuide or Lighting Facts labels. All Web sites advertising covered refrigerators, refrigerator-freezers, freezers, room air conditioners, portable air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service lamps, specialty consumer lamps (for products offered for sale after May 2, 2018), and televisions must display, for each model, a recognizable and legible image of the label required for that product by this part. The Web site may hyperlink to the image of the label using the sample EnergyGuide and Lighting Facts icons depicted in appendix L of this part. The Web site must hyperlink the image in a way that does not require consumers to save the hyperlinked image in order to view it.

\* \* \* \* \*

12. Redesignate Appendix E to Part 305 as Appendix E1 to Part 305 and add Appendix E2 to Part 305 to read as follows:

**Appendix E2 to Part 305—Portable Air Conditioners**

**Range Information**

Seasonally Adjusted Cooling Capacity Range (Btu/h)	Range of estimated annual energy costs (dollars/year)	
	Low	High
Less than 6,000 Btu	\$48	\$98
6,000 to 7,999 Btu	87	120
8,000 or greater Btu	104	135

13. Revise Appendix K2 to Part 305 to read as follows:

**Appendix K2 to Part 305—Representative Average Unit Energy Costs for Dishwasher, Room Air Conditioner, Portable Air Conditioners Labels**

This Table contains the representative unit energy costs that must be utilized to calculate estimated annual energy cost disclosures required under §§305.16, 305.18

and 305.27 for dishwashers, room air conditioners, and portable air conditioners. This Table is based on information published by the U.S. Department of Energy in 2017.

Type of energy	In commonly used terms	As required by DOE test procedure
Electricity	¢13.00/kWh <sup>1</sup>	\$.1300/kWh.
Natural Gas	\$1.05/therm <sup>2</sup> or \$10.86/MCF <sup>3</sup>	\$0.00001052/Btu.
No. 2 Heating Oil	\$2.59/gallon <sup>4</sup>	\$0.00001883/Btu.
Propane	\$1.53/gallon <sup>5</sup>	\$0.00001672/Btu.
Kerosene	\$3.01/gallon <sup>6</sup>	\$0.00002232/Btu.

<sup>1</sup>kWh stands for kilowatt hour. kWh = 3,412 Btu.

<sup>2</sup>therm = 100,000 Btu.

<sup>3</sup>MCF stands for 1,000 cubic feet. For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,032 Btu (British thermal units).

<sup>4</sup>For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 137,561 Btu.

<sup>5</sup>For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.

<sup>6</sup>For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

By direction of the Commission.

**April J. Tabor,**  
*Acting Secretary.*

**Concurring Statement of Commissioner Christine S. Wilson**  
**Energy Labeling Rule**

I support the Commission's decision to issue a Federal Register Notice seeking comment on the Energy Labeling Rule. The Notice seeks comment on proposed requirements for the EnergyGuide labels for portable air conditioners and proposes conforming amendments to reflect upcoming Department of Energy changes to efficiency descriptors for central air conditioners. In addition, the Notice

seeks comment on the more highly detailed and prescriptive aspects of the Rule. In a prior request for comment on this Rule, I questioned whether these prescriptive requirements were necessary and encouraged the Commission to rethink its approach to the scope and detail of these requirements.<sup>1</sup> I am pleased that the Commission is seeking comment on this issue.

Specifically, this Notice seeks comment on whether a more flexible approach to labeling obligations would provide sufficient guidance to businesses while simultaneously fulfilling the Commission's mandate under the statute.<sup>2</sup> The current requirements are highly prescriptive. For example, the Rule specifies the trim size dimensions for labels, including the precise width and length (e.g. width 5 ¼ to 5 ½ inches (13.34 cm. to 13.97 cm.)); the number of picas for the copy set (between 27 and 29); the type style and setting; the weight of the paper stock on which the labels are printed (not less than 58 pounds per 500 sheets (25" x 38") or equivalent); and a suggested minimum peel adhesive capacity of 12 ounces per square inch. These highly prescriptive requirements depart significantly from the approach employed by other Commission Rules and Guides that contain labeling requirements. For example, the Rules and Regulations Under the Textile Fiber Products Identification Act provide simply that the "label shall be conspicuous and shall be of such durability as to remain attached to the product and its package throughout any distribution, sale, resale and until sold and delivered to the ultimate consumer."<sup>3</sup> The Commission's Guides for Select Leather and Imitation Leather Products similarly require that the label "should be affixed so as to remain on or attached to the product

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<sup>1</sup> See Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 10, 2018), <https://www.ftc.gov/public-statements/2018/12/dissenting-statement-commissioner-christine-s-wilson-notice-proposed>.

<sup>2</sup> Energy Policy and Conservation Act, 42 U.S.C. 6295.

until received by the consumer purchaser.”<sup>4</sup>

While I have great faith in markets to produce the best results for consumers, the prerequisite of healthy competition is sometimes absent. In limited situations, regulations can help address market failures. But for regulations to succeed in restoring market forces, they must eliminate the market failure in the most narrow and targeted manner possible. Regulatory “fixes” that extend beyond simply correcting the problem may upset the balance of forces in the rest of the market and, ultimately, may harm consumers.<sup>5</sup> That is why I share the President’s goal of eliminating unnecessary and burdensome regulatory requirements.<sup>6</sup>

The Trump administration has called for agencies to carefully review regulations. I am proud that the FTC has had a long tradition of proactively reviewing our rules to ensure our regulatory program protects consumers while seeking to avoid the unnecessary imposition of costs on businesses.<sup>7</sup> In the last few years, the FTC has repealed or streamlined significantly a number of Rules and Guides. For example, the FTC recently repealed the Picture Tube Rule, which the Commission determined was no longer necessary to prevent deceptive claims regarding the size of television screens.<sup>8</sup> The FTC also revised the Jewelry Guides, removing outdated provisions as well as lifting restrictions on the marketing of gold-

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<sup>3</sup> 16 CFR part 303.15.

<sup>4</sup> 16 CFR part 24.2(g).

<sup>5</sup> See, e.g., Howard Beales, et al., “The Proper Role of Rules in a Gloriously Unruly Economy”, released by the Regulatory Transparency Project of the Federalist Society, August 28, 2019, <https://regproject.org/paper/the-proper-role-of-rules-in-a-gloriously-unruly-economy/> (discussing large and unintended consequences of burdensome regulations).

<sup>6</sup> Executive Order 13,771, 82 FR 9339 (Feb. 3, 2017) (imposing a rule that for every new regulation created, two must be eliminated).

<sup>7</sup> In the 1990s, the Commission rescinded 24 Guides (addressing, e.g., fallout shelters, the decorative wall paneling industry, and the dog and cat food industry) and 13 trade rules, including those concerning the misuse of “automatic” or terms of similar import as descriptive of household electric sewing machines; deceptive advertising and labeling as to size of tablecloths and related products; and the Frosted Cocktail Glass Rule.

<sup>8</sup> See <https://www.ftc.gov/policy/federal-register-notice/16-cfr-part-410-deceptive-advertising-sizes->



content products.<sup>9</sup> Just last year, the FTC rescinded the Nursery Guides—rules governing the sale of outdoor plants—because they had outlived their utility for consumers and industry.<sup>10</sup>

I applaud the FTC’s regular, systematic review of all of its rules and guides on a rotating basis. When the Commission conducts a review of a Rule or Guide, we regularly ask if the regulation is still necessary. We ask about the costs and benefits to businesses and consumers; conflicts with state, local, federal or international laws; whether consumer perceptions have changed; and the effect, if any, that changes in relevant technological, economic or environmental conditions have had on Rules and Guides. This process lends transparency to the Commission’s regulatory review. The Commission is receptive and responsive to the comments, often making regulatory revisions to address changing market forces.

Freeing businesses from unnecessarily prescriptive requirements benefits consumers. Although the Commission long ago abandoned some of the most egregious instances of invasive regulatory zeal that earned it the sobriquet of the “second most powerful legislature in Washington,”<sup>11</sup> forswearing new mistakes is not enough. Accordingly, I am pleased to see the Agency reviewing the more prescriptive aspects of this Rule and am committed to an ongoing practice of identifying opportunities to streamline our regulations by updating, modifying, or eliminating outdated, burdensome, or unnecessary provisions.

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viewable-pictures-shown.

<sup>9</sup> See <https://www.ftc.gov/public-statements/2018/07/statement-basis-purpose-final-revisions-jewelry-guides>.

<sup>10</sup> See Press Release, Fed. Trade Comm’n, “FTC Approves Proposal Rescinding Nursery Guides”, (June 4, 2019), <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-approves-proposal-rescinding-nursery-guides>.

<sup>11</sup> See, e.g., J. Howard Beales, III & Timothy J. Muris, FTC Consumer Protection at 100: 1970s Redux or Protecting Markets to Protect Consumers?, 83 Geo. Wash. L. Rev. 2157, 2159 (2015) (quoting Jean Carper, The Backlash at the FTC, Wash. Post, Feb. 6, 1977, at C1).

